



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

March 18, 1963

**WAGGONER CARR
ATTORNEY GENERAL**

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. C- 37

Re: Whether shares of stock are subject to inheritance taxes upon death of husband where shares had been issued to husband and wife as joint tenants with right of survivorship and had been purchased by the husband with the separate funds of the wife.

Dear Mr. Calvert:

Your letter requesting the opinion of this office on the above captioned matter reads as follows:

"We desire the opinion of your office regarding the inclusion for inheritance tax purposes of stock held in joint tenancy with rights of survivorship, and not as tenants in common, where the stock was purchased by the husband with the separate funds of his wife.

"W. L. C. Poetter died testate, a resident of DeWitt County on December 4, 1961, and his wife, Mrs. Virginia L. Poetter, who qualified as independent executrix, made the required reports as provided in the inheritance tax law to close the estate for inheritance tax purposes. Mrs. Poetter's report was accepted as filed and the tax paid.

"Subsequently, a request was made by Mrs. Poetter and refused by this Department for a waiver of consent to transfer 255 shares of San Antonio Drug Company stock standing in her name and the name of her deceased husband as joint tenants with rights of

survivorship and not as tenants in common, because the stock was omitted from her inheritance tax report.

"Mrs. Poetter has now submitted an affidavit to this Department setting out the facts with respect to the purchase of this stock and her attorney has submitted a memorandum brief giving his opinion that this was the separate property of Mrs. Poetter and, therefore, no part of the estate of W. L. C. Poetter for inheritance tax purposes. Both of these instruments are enclosed herewith.

"It appears to us that one-half the value of this stock is includible in the inheritance tax report and a tax due thereon in view of your Opinion No. WW-1348. Please advise whether or not our view is correct in this matter."

We quote the following excerpt from Mrs. Poetter's affidavit:

"During the lifetime of my husband, Wilbert C. Poetter, who died December 4, 1961, and for many years prior thereto I maintained a checking account in the First National Bank of Yorktown, Texas, styled 'Mrs. W. C. Poetter'. I opened this account in the early 1940's, prior to 1946, when oil was begun to be produced from my separate lands in DeWitt County, Texas, and I placed my royalty checks from the production of said oil into this account. I placed no other funds in the account except my royalty checks, which were my separate funds, and I did this in order to keep my separate funds apart from any community property funds of my husband and myself. No community property funds were ever placed into this account, and this account was my sole and separate property.

"From time to time my husband, Wilbert C. Poetter, would select various corporations in which I might invest my funds as they accumulated in my separate account aforesaid and at his suggestion we would purchase stocks in the corporations for me, he placing the order for same with the various brokerage firms or companies and I would then draw a check on the aforesaid account in the First National Bank in Yorktown, Texas, and thereby use my separate funds to purchase the stock as part of my separate estate.

"My husband, Wilbert C. Poetter, when he would order the stock for my separate estate and property would have the shares issued as follows (or similarly) 'Wilbert C. Poetter and Mrs. Virginia L. Poetter, as joint tenants with right of survivorship and not as tenants in common'. This was done by him under the impression that this would make the stocks easily transferable or sold in the event of my death before him, whereas if the stocks were in my name alone he felt there would be much inconvenience and expense in transferring or selling the stock. There was no understanding between my husband and myself that any part of the stocks in question were to be anything but my separate property during my lifetime and my separate funds were used to purchase these stocks under the understanding that the stocks purchased would be my separate property and would be no part of his property or estate."

The memorandum brief submitted in connection with the taxpayer's position in this case contains the following paragraph:

"It is our feeling that despite the stocks being issued in the joint tenancy manner as above set forth that the actual ownership was still based on the intention

of the parties and the source of the funds used to purchase same. . . . With this in mind we feel that the above shares paid for by Mrs. Poetter's separate funds were her separate property. Please advise us your ruling on this."

Attorney General's Opinion No. WW-1348 (June 8, 1962) held that the decedent's one-half interest in a bank account which the decedent and another held as joint tenants with right of survivorship was subject to an inheritance tax when received by the survivor at the decedent's death. The opinion considered the case of Davis v. East Texas Savings & Loan Association, ____ Tex. ____, 354 S.W.2d 926 (1962) which held that a savings and loan certificate purchased by the husband with his separate funds and issued in his name, but subsequently reissued to him and his wife as joint tenants with right of survivorship, passed at his death to the wife. At page 931 the Court pointed out that when the contract was made with the savings and loan association, the wife became vested with a present, though defeasible, interest in the deposit. Her interest would have been defeated if the certificate had been changed by her husband or the deposit withdrawn before his death, or if she had predeceased him, but since none of these things happened, at his death, the wife became the sole owner of the entire deposit.

The Davis case cannot be distinguished from the case we are presently considering because it involved a savings and loan certificate and this case involves stock. When Mr. Poetter, acting as agent for his wife, and with her knowledge and consent as disclosed by Mrs. Poetter's affidavit, made the contract with the various corporations from which he purchased the stock, and when the stock was issued by the various corporations to "Wilbert C. Poetter and Mrs. Virginia L. Poetter, as joint tenants with right of survivorship and not as tenants in common", both joint tenants became vested with a present, though defeasible, interest in the stock.

The fact that Mrs. Poetter and her husband intended to preserve the separate character of her property cannot change the legal effect of their actual transactions. You are therefore advised that at Mr. Poetter's death, Mrs. Poetter received his one-half joint interest in the stocks involved, and that such amount is subject to an inheritance tax.

S U M M A R Y

Where a husband used wife's separate funds, with her knowledge and consent, to purchase stocks issued in his name and in his wife's name as joint tenants with right of survivorship and not as tenants in common, the husband's one-half interest became vested at the time of the purchase subject to being divested, and was, at his death, subject to an inheritance tax upon passing to the survivor under the terms of the contract, despite the fact that the husband and wife had intended the stock to remain the separate property of the wife.

Yours very truly,

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APPROVED:

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